

## **Assembly Bill No. 2500**

### **CHAPTER 458**

An act to amend Sections 27001, 27002, and 27200 of, to amend and renumber Sections 27007 and 27200.1 of, to amend the heading of Chapter 3 (commencing with Section 27200) of Division 2 of Title 4 of, to repeal Sections 27003, 27004, 27005, 27006, 27201, and 27203 of, to repeal and add Section 27202 of, and to repeal and add Chapter 2 (commencing with Section 27100) of Division 2 of Title 4 of, the Corporations Code, relating to corporations.

[Approved by Governor September 12, 1996. Filed  
with Secretary of State September 13, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2500, Kuykendall. Corporations: securities.

(1) Existing law provides that an individual, as defined, who intends to solicit, receive, collect, or solicit any subscription or contract to pay, compensation of any kind, from any owner or holder of any security, for the purpose of protecting, enforcing, or representing the rights of the security owners or holders, shall first apply for and secure a certificate from the Commissioner of Corporations, authorizing the individual to do so. Under existing law, any individual who violates the certification requirement or other provisions of the Security Owners Protection Law is both civilly and criminally liable.

This bill would delete the certification requirement. The bill would prohibit any individual, in connection with the solicitation, receipt, or collections of, or solicitation of any subscription or contract to pay, any contributions, fees, funds, or compensation of any kind, from any owner or holder of any security, for the purpose of protecting, enforcing, or representing the rights of the security owners or holders evidenced by the security, from engaging in specified acts. By so doing, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program. This bill would also increase the criminal penalties for violation of the Security Owners Protection Law.

(2) Existing law excludes from the definition of individual, any person who the commissioner by rule designates as not being comprehended within the purpose of the law.

This bill would delete this exclusion.

(3) Existing law authorizes the commissioner to establish rules and regulations governing the provisions of the Security Owners Protection Law and to make public certain information concerning any company or individual if to do so would prevent fraud or injury

to the public. Existing law also provides that the administrative costs of enforcing the law shall come from the State Corporations Fund.

This bill would delete these provisions.

(4) Existing law permits a person who has violated the Security Owners Protection Law to avoid civil liability by making a written offer, prior to the commencement of a suit, to return any compensation. Existing law specifies the matters to be contained in the offer, requires the approval of the form of the offer by the commissioner, and permits the commissioner to impose further specified conditions for approval of an offer. The commissioner may also issue a cease and desist order or a suit to enjoin violations of the law.

This bill would delete these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 27001 of the Corporations Code is amended to read:

27001. As used in this division “security” includes all of the things enumerated in Section 25019 and also includes shares, stock, and investment certificates as defined in the Savings Association Law.

SEC. 2. Section 27002 of the Corporations Code is amended to read:

27002. (a) As used in this division, “individual” includes every natural person, domestic or foreign private corporation, nonprofit corporation, unincorporated association, company, partnership of whatever kind, syndicate, joint stock company, trustee, protective committee, depositors’ league, and other similar organization however described.

(b) As used in this division, “individual” does not include any of the following persons:

(1) Any licensed practicing attorney rendering or performing services in connection with the practice of law.

(2) Any person holding a broker-dealer’s or investment adviser’s certificate then in effect issued by the commissioner, rendering or performing services as such.

(3) Any holder of a permit then in effect, granted by the commissioner under the Corporate Securities Law, permitting the issue of certificates of deposit.

(4) Any securities depository as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the

Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code.

(5) Any broker licensed by the Real Estate Commissioner of this state rendering or performing services with respect to securities, if the person would not be subject to the broker-dealer certification requirements for effecting transactions in the securities.

(6) Any security owner or holder who, without compensation of any kind, induces or attempts to induce, other security holders or owners of the same issuer into entering into agreements with persons who are excluded from “individual” by virtue of paragraphs (1) to (5), inclusive.

SEC. 3. Section 27003 of the Corporations Code is repealed.

SEC. 4. Section 27004 of the Corporations Code is repealed.

SEC. 5. Section 27005 of the Corporations Code is repealed.

SEC. 6. Section 27006 of the Corporations Code is repealed.

SEC. 7. Section 27007 of the Corporations Code is amended and renumbered to read:

27003. If any provision of this division, or the application thereof to any person or circumstance, is held invalid, the remainder of this division, or the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 8. Chapter 2 (commencing with Section 27100) of Division 2 of Title 4 of the Corporations Code is repealed.

SEC. 9. Chapter 2 (commencing with Section 27100) is added to Division 2 of Title 4 of the Corporations Code, to read:

#### CHAPTER 2. UNLAWFUL AND FRAUDULENT CONDUCT

27100. Any individual who, within this state, solicits, receives, collects, or solicits any subscription or contract to pay, any contributions, fees, funds, or compensation of any kind, from any owner or holder of any security, for the purpose of protecting, enforcing, or representing the rights of the security owners or holders evidenced by the security, shall be subject to the provisions of this division.

27101. It is unlawful for any individual, directly or indirectly, in connection with the solicitation, receipt, or collection of, or solicitation of any subscription or contract to pay any contributions, fees, funds, or compensation of any kind, from any owner or holder of any security, for the purpose of protecting, enforcing, or representing the rights of the security owners or holders evidenced by the security, to do any of the following:

(a) Employ any device, scheme, or artifice to defraud.

(b) By means of any written or oral communication, make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(d) Misappropriate or convert the funds, security, or property of any other person.

SEC. 10. The heading of Chapter 3 (commencing with Section 27200) of Division 2 of Title 4 of the Corporations Code is amended to read:

#### CHAPTER 3. CIVIL LIABILITY AND CRIMES

SEC. 11. Section 27200 of the Corporations Code is amended to read:

27200. Every individual who solicits, receives, collects, or contracts for the payment of, any contributions, fees, funds, or compensation of any kind, in violation of this division, is civilly liable for the return of the full amount of that contribution, fee, or fund, together with reasonable attorney's fees. This liability is both joint and several.

SEC. 12. Section 27200.1 of the Corporations Code is amended and renumbered to read:

27201. No action shall be maintained to enforce any liability created under Section 27200 unless brought before the expiration of two years after the violation upon which it is based or the expiration of one year after the discovery by the plaintiff of the facts constituting the violation, whichever shall first expire.

SEC. 13. Section 27201 of the Corporations Code is repealed.

SEC. 14. Section 27202 of the Corporations Code is repealed.

SEC. 15. Section 27202 is added to the Corporations Code, to read:

27202. Every individual who willfully violates Section 27101 is guilty of a public offense punishable by a fine not exceeding two hundred fifty thousand dollars (\$250,000), or by imprisonment in the state prison for two, three, or four years, or by both fine and imprisonment.

SEC. 16. Section 27203 of the Corporations Code is repealed.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative



on the same date that the act takes effect pursuant to the California Constitution.

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